

MEMORANDUM

Subject: Stillwater Bridge over St. Croix River
between Minnesota and Wisconsin

From: Director, Office of Environmental Policy
Washington, D.C. 20590

To: Mr. Herbert R. Teets
Regional Federal Highway Administrator (HPP-05)
Homewood, Illinois

This is in response to your September 22, 1988, memorandum on the subject project. We apologize for the delay in formulating this response.

Your memorandum transmitted an attachment which has seven basic questions with numerous subquestions. Some of the subquestions were project specific (e.g., "Who wants the old bridge saved;" "Who wants the old bridge removed;" etc.), and we have far less knowledge of the answers than the Minnesota Division Office. We have tried to answer all of the questions where we had sufficient knowledge in a general, policy-oriented way. The specifics of the project must be analyzed to determine how best to utilize the guidance contained herein.

Since there are numerous complex issues associated with this project and since the Minnesota Department of Transportation has assigned a representative to this project, we would be happy to assign representatives from both our office and the Chief Counsel's office to discuss the application of this policy guidance, attend any meetings and make an onsite review. Please advise as to your wishes on this subject.

Attachment 1 contains our answer to the questions in numerical order as they appeared in the attachment to your memorandum.

/ Original signed by /

Ali F. Sevin

1. Q. What aspects of this project development need to be coordinated with Wisconsin?

A. As you correctly noted in your commentary on the Division's questions, coordination should be discussed and agreed to by the two States. Issues such as providing data on environmental resources, impacts, and mitigation as well as funding and future maintenance should be clearly defined.

2(a) Q. How do the provisions of the Wild and Scenic River Act affect this project?

(How does the designation of the Lower St. Croix Scenic Riverway affect the environmental impact statement environmental (EIS) process?)

A. Item 15 on page 30 of the Technical Advisory 6640.8A and question 8 of the Section 4(f) policy paper explain how the wild and scenic rivers designation affect EIS and Section 4(f) documents. As a minimum there should be extensive early and continuing coordination with the river management agency (in this case, the National Park Service (NPS)). This coordination should be an integral part of the project development/environmental process for this project. This coordination should extend to mitigation and location issues. If a land transfer from NPS is needed, NPS's position on these issues is critical. Since the river is classified by NPS as a recreational river area and is managed as such, Section 4(f) of the DOT Act would apply to bridge piers in the river bed, if publicly owned.

2(b) Q. Is the interpretation by DOI that this project is a "water resources project" correct?

(The DOI rationale is that piers in the water affect the "free-flowing" condition of the river, therefore, a bridge meets the criteria of being a "water resources project.")

A. It has been a longstanding DOT position that water resources projects are limited to dams, water conduits, reservoirs or power projects as listed in the Wild and Scenic Rivers Act.

2(c) Q. Who has the final determination on mitigation, location, removal of old bridge, etc.? (The DOI's position seems to be that it tells us what would be acceptable mitigation, it tells us whether it is acceptable to build in a new location, and it tells us that if we build in a new location, then the old bridge must be removed.)

(The overriding question here seems to be whether the Scenic River designation was intended to control highway system improvements. Highways are not specifically mentioned in the legislation like dams, transmission lines, etc.)

- A. While the State makes the final decision on mitigation, location, and disposition of the old bridge, there are a number of Federal actions associated with this project which may have a bearing on these decisions. For example, if the old bridge is to be left in place, the USCG may insist on specific pier placement or a specific location for the new bridge as a condition of its permit. The USCG Headquarters has informed us, however, that only bridge locations south of milepost 24 will require a permit. If the NPS owns land needed for the project, it could impose certain conditions for the transfer. If the replacement bridge and disposal of the old bridge are proposed for Federal-aid, the FHWA would need assurance that the Section 4(f) requirements are met and that the project proposal includes all reasonable measures to avoid or minimize direct and adverse effect on the values for which the river was designated recreational.

- 2(d) Q. What is the definition of the wild and scenic designation in this corridor?

(The portion of the river in the study area (from the northern Washington County line to the Mississippi River) is classified as "recreational." The Minnesota Department of Natural Resources (MNDNR) says that the classification does not matter because all the classified areas are managed the same--keep them as they are now, no new developments.)

- A. The Wild and Scenic Rivers Act did not designate the lower portion of the St. Croix River as either scenic or recreational. Section 3(b) of the Act required the Secretary of the Interior, jointly with the appropriate agencies of the affected States to determine the class of the river for its southernmost 25 miles. The lower 41.7 miles of the St. Croix River were classified as recreational in September of 1975. Even if the river had been classified as scenic, we do not believe that a new bridge is prohibited by-Federal law.

- 3(a) Q. Disposition of the existing bridge; FHWA has concurred in its eligibility for inclusion in the National Register of Historic Places.

If a decision is made that no feasible or prudent alternatives directly impact the old bridge, can the question on disposition of the old bridge be handled as

a separate issue/project (i.e., independent of the EIS)?

- A. If the construction of the replacement bridge does not require removal of the old bridge, and except as otherwise provided in 3(c) below, disposition of the old bridge could be considered as a separate issue at a later time. Stated another way, if the Federal action (by FHWA and the U.S. Coast Guard) is for the funding and permitting of the new bridge, the EIS would not have to decide the fate of the old bridge. In such a case the EIS would, however, need to stipulate that Federal-aid funds are not being proposed for either demolition or rehabilitation of the old bridge. The EIS would need to clearly state that disposition of the old bridge is not a component of this EIS. In addition, the EIS should describe the different possibilities for the future of the old bridge such as rehabilitation, adaptive reuse, recreation, etc., and that if no satisfactory solution could be found the bridge may be eventually removed. In any event, the FHWA would need assurance that any future use of the old bridge be carried out in a manner that would preclude its listing on the inventories of 23 U.S.C. 144 (b) or 144 (c) (1).

The two attached memoranda (Surface Transportation and Uniform Relocation Assistance Act of 1987 Section 123(f) Historic Bridges dated July 22, 1987, and Treatment of Historic Bridges in the Section 4(f) Evaluation dated May 10, 1988) provide additional guidance on the treatment of historic bridges.

- 3(b) Q. How do we resolve the conflicting interests to remove the bridge and the historical preservation legislation? What is the FHWA position?

- A. In this instance there are conflicting interests which must be considered in reaching a decision on disposition of the old bridge. These include navigation, the recreational values of the river, the congressional mandates in Section 123(f) (1) of Public Law 100-17 to preserve historic bridges, and the requirements of Section 4(f).

The conflicting interests on either removing or retaining the old bridge should be resolved using a balanced consideration of all relevant interests (including those listed above) and should involve those agencies having a responsibility for those interests and the State and local political jurisdictions which have a stake in the outcome. It would, of course, be desirable to reach a decision on disposition of the old bridge as part of the EIS process for the new bridge.

If this is not possible, however, we believe that the disposition issue could be dealt with as noted in 3(a) above.

3(c) Q. Who wants the old bridge removed?

(This question is connected to the question of "Who has Authority" in that DOI says that if we build another crossing, then we must remove the old crossing--nonproliferation of crossings, no new development. This position is generally shared by the other environmental groups--DNR's MN/WI Boundary Commission, and private groups--Sierra Club and the Voyagers Region National Park Association).

(The Coast Guard only wants the old bridge removed if it ceases to be used for transportation purposes.)

A. The USCG Headquarters Office has informed us that the Coast Guard would insist on removal of the old bridge only if it is not used for some useful purpose (not necessarily transportation). Since the old bridge is historic, it can be removed with Federal-aid funds only if there is no feasible and prudent alternative to removal. While the position of State agencies, other Federal agencies and interested private groups may have a bearing on the prudence of leaving the old bridge in place, we do not believe they can require its removal if it can serve some useful purpose.

3(d) Q. Who wants the old bridge saved?

(The city of Stillwater believes that the old bridge is very important to its historic image and wants it to stay. It also wants to keep the bridge to maintain direct access to the Houlton area in Wisconsin. This position is supported by the Houlton area.)

A. In addition to the two cities, the Advisory Council on Historic Preservation, and the historic preservation officers from the respective States should be included as parties having concerns on preservation of the old bridge.

4(a) Q. Proposal to make existing bridge a toll facility now; Would it require an environmental analysis?

A. The application of a toll would not constitute a Federal action and as such Federal environmental requirements would not apply. State requirements are, of course, another matter, and are beyond our purview.

4(b) Q. Can the existing bridge be converted to a toll bridge now? (And not affect our EIS process?)

A. To our knowledge the existing bridge has never been a Federal-aid project. This being the case, 23 U.S.C. 301 does not apply. However, there exists the 1929 legislation which grants the consent of Congress to the States of Minnesota and Wisconsin "to construct, maintain, and operate a free (emphasis added) highway bridge . . . " Consequently, it would appear necessary to amend this legislation to allow the application of a toll. We are not aware of any reason why converting the bridge now would affect the EIS process.

4(c) Q. How does this affect the Federal-aid system?

A. Placing tolls on the existing bridge would not require any system action.

4(d) Q. If converted to a toll facility now, would a replacement bridge be eligible for BR or BRD funds?

A. Keeping the old bridge in place and placing tolls thereon would not affect the Federal-aid eligibility of a new bridge except as noted in 5 below.

5(a) Q. Existing bridge left in place;

Can the use be restricted?

(If we retain the bridge as a part of the system?)

(If the bridge is retained, but removed from the system?)

A. If bridge replacement funds are used to construct the new bridge and the old bridge is left in place as a public conveyance for motorized vehicles, then the old bridge must be restricted to the type and volume of traffic it can safely handle. Furthermore, the existing bridge cannot be used to provide the same type of service as the replacement bridge or be used in any manner that could result in it ever being classified as deficient. The use of Highway Bridge Replacement and Rehabilitation Program (HBRRP) funds is restricted to "taking deficient bridges out of service." Other special restrictions will apply as noted in the aforementioned July 22, 1987, memorandum and in Mr. Eugene Cleckley's (HEV-11) two letters to Jack J. Hoffman (attached).

5(b) Q. Does there need to be a commitment to retain the historic integrity?

(If the bridge were turned over to someone else, like the city?)

- A. If there are no FHWA actions associated with retention of the old bridge, there is no Federal requirement for retaining the historic integrity of the bridge. If Federal-aid funds are proposed for preserving the old bridge, then pursuant to 23 U.S.C. 144(0)(4) the bridge could be donated only to a party (e.g., the city) that agrees to: (1) accept title, (2) maintain (preserve) the features that give it historic significance (qualities that qualify it for the National Register), and (3) assume all future legal and financial responsibility for the bridge and hold the State highway agency and the FHWA harmless in any liability action.

5(c) Q. Do we need to advertise its availability for sale?

(If we want to turn the bridge over to the city?)

- A. If the State(s) wishes to donate the bridge to one or both cities, its availability need not be advertised.

5(d) Q. Can the old bridge be left in place and abandoned?

(If no one comes forward and is willing to take the bridge over?)

- A. If the State takes the bridge out of service and cannot find a new owner for the bridge, it may be required to remove the bridge as a condition of the Coast Guard permit for a new bridge. If the bridge is removed from service and not demolished, the State would be well advised to take prudent measures to assure that the bridge does not become a public nuisance or hazard.

5(e) Q. Can it be left in place as a fishing pier or as a pedestrian facility only?

(Would the lift span have to be in the raised position so it would not interfere with river navigation?)

- A. The old bridge can be left in place as either a fishing pier or a pedestrian facility. The USCG would require the lift span in the raised position or else continued service of the bridge tender. If the lift span is left in a raised position, it would no longer be a bridge, but a Section 10 permit from the Corps of Engineers would be needed.

6(a) Q. Does 4(f) apply?

Piers grounded in the wild and scenic river? Is the stream bed publicly owned?

- Minnesota (yes)

- Wisconsin (yes)

- A. Since the stream bed is publicly owned, Section 4(f) would apply to any bridge piers constructed in the river.

6(b) Q. Spanning scenic easement?

Piers in scenic easement?

(Scenic easements were acquired by the NPS (DOI) in the federally administrated zone to preserve the scenic views from the river. It is the position of the NPS that if a bridge is constructed over a scenic easement, then Section 4(f) would apply--negative effect on the perpetual right of ownership--to control the view--that the NPS owns through the scenic easement.)

- A. Answer 8 B of the Section 4(f) policy paper states that publicly-owned lands in the immediate proximity of wild and scenic rivers may be protected by Section 4(f) depending on the manner in which they are administered by the Federal, State, or local government which administers the land. Section 4(f) would apply to those portions of the land designated in the management plan for recreation or other Section 4(f) activities. Where the scenic easement is for recreation or other Section 4(f) activities, Section 4(f) would apply.

7.a. Q. Federal-aid funding issues;

NEW BRIDGE-

Eligible for BRD?

(If old bridge is removed?)

(If old bridge stays?)

Eligible for BR?

(If old bridge is removed?)

(If old bridge stays?)

- A. The discretionary bridge program (DBP) is part of the HBRRP. As such, the same basic eligibility requirements apply to each program. The bridge must be classified as deficient, at least 20 feet in length, carry highway traffic and have a sufficiency rating of 80 or less from the sufficiency rating formula. Additional eligibility requirements apply to the DBP.

The bridge must be on a Federal-aid system, cost more than \$10 million or twice a State's annual apportionment, and have a rating factor of 100 or less from the rating factor formula. The old bridge does not need to be taken down in order for the new bridge to be eligible for HBRRP. If, however, the old bridge were to be kept in service, FHWA would need assurance noted in the answer to question 5(a) that the old bridge not be used in a manner which could result in its ever being rated as deficient.

7(b) Q. Other federal-aid eligibility (P)?

(If old bridge is removed?)

(If old bridge stays?)

A. If Federal-aid primary funds are proposed for the new bridge, the conditions on the old bridge (noted in answers to questions 5(a) and 7(a) would not apply.

7(c) Q. EXISTING BRIDGE-

If the load capacity and safety features of the old bridge are adequate to serve on the public road at its existing location, would Federal-aid be limited to cost for removal and disposal?

A. For an existing bridge if the load capacity and safety features of the old bridge are adequate to serve on the public road at its existing location, the bridge should be considered a very strong candidate for rehabilitation. If the bridge is rehabilitated in place and no new eligible costs are not limited to demolition. Under this scenario, "reasonable costs" may be used for rehabilitation so the bridge can continue to provide service.

7(d) Q. If Federal-aid is used for rehabilitation, could the bridge become a toll facility?

A. If the original bridge was built with Federal-aid funding and was toll-free, then tolls cannot be added at a later date when the bridge is rehabilitated. If the original bridge was not built with Federal-aid funds, but Federal-aid is used for rehabilitation, then the provisions of 23 U.S.C. 301 would apply and except as provided in 23 U.S.C. 129, a toll could not be imposed.

7(e) Q. Could the old bridge be upgraded at this location in lieu of eligible work on new bridge (expend funds eligible for sidewalk on new bridge on existing bridge)?

A. If a new bridge is built with HBRRP funds then neither HBRRP funds nor or any other Federal-aid funds can be used to upgrade the existing bridge to provide the same general type of service.

7(f) Q. Does Federal-aid for renovation vary if the use is restricted? To Pedestrians? Eliminating trucks?

A. Federal-aid participation for rehabilitation does vary if the bridge's use is restricted. Each situation must be reviewed individually. Specific information on this can be found in the aforementioned attached material.